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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of: FUJIOKA, et al.

Customer No.: 21,302

Serial No.: 09/944,444

Group No.: 2672

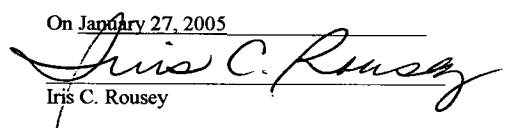
Filed: August 31, 2001

Examiner: HAVAN, Thu Thao

For: SUPER IMPOSED IMAGE DISPLAY COLOR SELECTION SYSTEM AND METHOD

I, Iris C. Rousey, certify that this correspondence is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

On January 27, 2005


Iris C. Rousey

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)

An Application for Patent Term Adjustment (PTA) is made herein under 37 CFR § 1.705(b). Accompanying the Request is the required fee of \$200.00 set forth in 37 CFR § 1.18(e).

The Applicant respectfully submits that an additional 68 days should be added to the Patent Term based upon 37 CFR § 1.702(a)(2), which requires a response to a reply under 35 U.S.C. § 132 not later than four months after the date on which the reply was filed. The Applicant has already been granted 488 days of the Patent Term under 37 CFR § 1.702(a)(1) for the Office's failure to issue a notification 14 months after filing. However, it is believed that the Applicant should also receive a reduction of 5 days to the Patent Term pursuant to 37 CFR § 1.704(b) for not responding to an Office Action within 3 months. Because of the currently requested additional 68 days, less the 5 days reduction, the correct Patent Term Adjustment should be 551 days.

The Applicant is entitled to the originally calculated 488 days based upon the following information: The Applicant is entitled to receive an adjustment of 488 days under 37 CFR § 1.702(a)(1). The Applicant's filing date was August 31, 2001, and 14 months from that date was October 31, 2002. Therefore, the Applicant is entitled to an adjustment equal to the time from October 31, 2002 until the first notification issued from the Patent and Trademark Office. The first notification did not occur until March 2, 2004. This is 488 days from October 31, 2002.

The Applicant has determined that the Patent Term should be adjusted based upon the following information: The Applicant received a Non-Final Rejection on March 2, 2004. It was determined that the Non-Final Rejection lacked information regarding the status of the claims. On June 2, 2004, an Interview was conducted with Examiner Havan in order to establish the status of the claims. The matter was resolved, and the Applicant mailed a Response to the Non-Final Rejection on June 2, 2004. The Response was received by the USPTO on June 7, 2004. On June 16, 2004, the USPTO sent out an Office communication reflecting the substance of the June 2nd interview. The Office communication was a copy of the Examiner's Interview Summary and a corrected copy of the Office Action Summary reflecting the corrected status of the claims. However, this communication is listed in the Patent Term Adjustment History as a Supplemental Non-Final action. It is believed that the entry into the PALM system of the Interview Summary as a Supplemental Non-Final action is in error. It is unclear as to whether or not this started a clock running against the Applicant, however the Applicant respectfully submits that there was no requirement to respond to the communication. The next communication received by the Applicant was the Notice of Allowance mailed on December 15, 2004. Furthermore, on January 7, 2005 a call was placed to the Patent Term Adjustment Help Desk in order to further investigate the PTA calculation. The Help Desk also believed that the error in calculation is due to the incorrect entry of the Supplemental Amendment on June 16, 2004.

Under 37 CFR § 1.703(a)(3) the Patent Term should be adjusted when the USPTO fails to respond to a reply within four months. The Applicant submits that the

communication on June 16, 2004 was not a proper action under 35 U.S.C. § 132, and that the proper response to the June 7th reply was not received until December 15, 2004, in the form of a Notice of Allowance. Four months from June 7, 2004 is October 7, 2004, and the adjustment time runs from the day after that date. December 15, 2004 is 68 days from October 8, 2004. Therefore, an additional 68 days should be added to the Patent Term Adjustment.

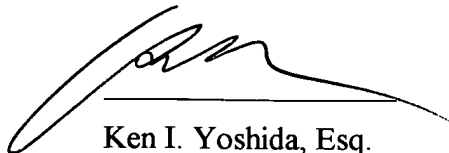
The Applicant has additionally determined that the Patent Term should be reduced based upon the following information: The first notification, a Non-Final rejection, was mailed on March 2, 2004. The USPTO did not receive a response until June 7, 2004. The Applicant should receive a reduction of 5 days to the Patent Term pursuant to 37 CFR § 1.704(b) for not responding to an Office Action within 3 months. This should result in a reduction of patent term of 5 days.

The total Patent Term Adjustment should be 551 days due to the original 488 days granted, plus the 68 days for Office delay, minus 5 days for the Applicant's delay. This Patent will not be subject to a terminal disclaimer.

Conclusion

In view of the above statements, the Applicant respectfully submits that the additional time of 63 days should be granted for a corrected total Patent Term Adjustment of 551 days.

Respectfully submitted,



Ken I. Yoshida, Esq.
Reg. No. 37,009

Date: January 27, 2005

KNOBLE, YOSHIDA & DUNLEAVY, LLC
Eight Penn Center, Suite 1350
1628 John F. Kennedy Blvd.
Philadelphia, PA 19103
(215) 599-0600